

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7735

Joint Petition of Otelco, Inc., Shoreham Telephone, LLC,)
and Shoreham Telephone, Inc. for approval of a transfer of)
control by merger, asset transfer, and associated)
transactions, pursuant to 30 V.S.A. §§ 107, 108, 109, 231)
and 311, including the issuance of a certificate of public)
good, and the designation of New Shoreham as an Eligible)
Telecommunications Carrier)

Order entered: 9/30/2011

PROTECTIVE ORDER RE STOCK PURCHASE AGREEMENT

I. INTRODUCTION

On April 11, 2011, Otelco, Inc., Shoreham Telephone LLC, and Shoreham Telephone Company, Inc. (collectively, the "Petitioners") filed a Motion for Protective Order for Specific Material concerning the Stock Purchase Agreement ("Agreement") designated as Attachment 2 to the April 11, 2011, Joint Petition in this docket. Specifically, the Petitioners assert that the Agreement and its associated schedules contain confidential information that is competitively sensitive and reveals confidential financial or personal information concerning one or more of the Petitioners or third persons, that should be maintained as confidential. The Petitioners submitted an averment to support their request for confidentiality. No party opposed the Petitioners' Motion.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that the Petitioners have made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant the Petitioners' motion for a protective order.

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent

possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.² However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?³

The Petitioners assert that the Agreement and associated schedules should be kept confidential for the following reasons:

- (1) The Agreement contains confidential financial and strategic information that the Petitioners have not provided and do not intend to provide to the public. In addition, the information contains personal and financial information related to the selling shareholders and employees of the Shoreham Telephone Company, Inc. The Petitioners also assert that the Agreement has unique value to the Petitioners and outlines commercially sensitive and personal privacy information. This information reflects a significant investment of specialized staff time and expertise and outside consultant fees. The information could not be replicated without substantial expense.

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, ("Entergy Docket"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

- (2) According to the Petitioners, the public release of the information would result in cognizable harm to one or more of the Petitioners and/or third parties. Details concerning certain characteristics of the transaction, if known, would reveal Otelco's transaction strategy and potentially jeopardize Otelco's ability to negotiate favorable deals in the future. Certain of the information concerns business plans for unregulated services. With respect to third parties, disclosure of the information concerning their employment, including compensation, would constitute an unwarranted invasion of their privacy.
- (3) Release of the information contained in the Agreement would result in significant financial harm to the Petitioners and invasion of privacy of the employees and shareholders of Shoreham Telephone Company, Inc.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that the Petitioners have made a *prima facie* showing that confidential treatment is warranted for the Agreement and associated schedules.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect the Movants to do the same here.

Finally, we note that the Petitioners have requested that the Agreement and associated schedules be kept under seal throughout the proceeding and indefinitely thereafter, until the parties consent to disclosure in accordance with Vermont law.

At this time, we do not explicitly rule that any specific information should remain confidential indefinitely as requested by the Petitioners. Instead, we will grant protection to the Agreement and associated schedules for the period ending three years after the date of the Agreement, i.e., the protection shall end as of April 2, 2014. Prior to the end of the three-year period, the Petitioners may seek an extension for some or all of the redacted information if it can demonstrate that continued protection is warranted for the specific information for which the extension is sought.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Agreement and associated schedules submitted by the Petitioners on April 11, 2011, shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of August 1, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

5. The protections established in today's Order shall expire as of April 2, 2014, unless extended by further order of the Board.

Dated at Montpelier, Vermont, this 30th day of September, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 30, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)